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BEFORE THE ARIZONA CORPORATION C

GARY PIERCE, CHAIRMAN
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL

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IN THE MATTER OF THE COMPLAINT
OF THE BUREAU OF INDIAN AFFAIRS,
UNITED STATES OF AMERICA,
AGAINST MOHAVE ELECTRIC
COOPERATIVE, INC. AS TO SERVICES
TO THE HAVASUPAI AND
HUALAPAI INDIAN RESERVATIONS

DOCKET NO. E-01750A-05-0579

BUREAU OF INDIAN AFFAIRS REPLY
CLOSING ARGUMENT ON REHEARING

**I. ALTHOUGH UTILITIES NEED REASONABLE ACCESS TO THEIR LINES,
THE ACC SHOULD NOT ISSUE AN ADVISORY DECISION ABOUT
EASEMENTS FOR THE LINE**

Neither MEC nor the ACC staff contends that MEC has ever been denied access to the Line. Nor do they contend that MEC will be unable to obtain or extend easements for the Line. Rather, they argue that because MEC must have access to the Line to service it, the ACC should find that if MEC is unable to obtain easements upon "mutually agreeable terms and conditions," then MEC will have no ability to operate or maintain the Line. For several reasons, the ACC should not make such a finding.

First, MEC and the staff rely upon A.C.C. R14-2-206(C)(1) to support their argument. That regulation, however, provides that a customer must grant an adequate easement to the electric utility. A "customer" is the person who applies for electric utility service and in whose name service is rendered. See A.C.C. R14-2-201(9). MEC's customers (*i.e.*, the Cesspooch and Bravo families) are not the individuals or entities that would be granting easements for the Line. The Line crosses parts of the Hualapai and Havasupai reservations and the Boquillas Ranch. Easements from the two tribes and the Boquillas Ranch owner, not MEC's customers, are needed for the Line.

Arizona Corporation Commission

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1 Therefore, reliance upon A.C.C. R14-2-206(C)(1) is misplaced and does not justify or
2 support an advisory finding about easements for the Line.

3 Second, an advisory decision about the easements should be avoided. See
4 *Armory Park Neighborhood Ass'n v. Episcopal Comm. Servs.*, 712 P.2d 914, 919 (Ariz.
5 1985); *McMurren v. JMC Builders, Inc.*, 63 P.3d 1082, 1088 (Ariz. Ct. App. 2003)).
6 MEC, like all electric utilities, must be able to access its property and lines. The BIA
7 notes that Boquillas Ranch is owned in fee by the Navajo Nation, and not owned in trust
8 by the United States for the benefit of the Navajo Nation. Therefore, MEC is able to
9 obtain an easement for the Line across Boquillas Ranch in the same manner as it does
10 for any fee property it serves. Nothing is unique about the Line, MEC has never been
11 denied access to the Line, and MEC does not anticipate any problems with extending
12 the easements. Carlson RHT, p. 68, ln. 20 – p. 69, ln. 5, lns. 9-16; Williams RHT, p.
13 102, lns. 11-16. The ACC therefore should not make a hypothetical finding about an
14 event or occurrence that likely will never occur.

15 Finally, if the ACC makes a finding that MEC has to service the Line only if
16 easements are granted on “mutually agreeable” terms, then MEC could effectively
17 abandon the Line without complying with A.R.S. § 40-285. MEC could claim that the
18 terms of any proposed easements from the tribes or the Boquillas Ranch were not
19 “mutually agreeable” and abandon the Line without ACC approval. The ACC should not
20 make a finding that arguably could allow MEC to circumvent state laws designed to
21 protect the public, such as A.R.S. § 40-285.

22 Because A.A.C. R14-2-206(C)(1) is inapplicable and MEC almost certainly will
23 receive extensions of its easements once it applies for them, the ACC should not make
24 an advisory finding about what could transpire in the unlikely event that an easement is
25 not extended. A finding based upon a remote “event which may never happen” is
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unnecessary and should be avoided. See *Citibank v. Miller & Schroeder Fin., Inc.*, 812 P.2d 996, 1000 (Ariz. Ct. App. 1991).¹

II. THE BIA IS A RETAIL CUSTOMER AT LONG MESA

The factual record in this proceeding demonstrates that the BIA is a retail customer on the 70-mile Line. Moreover, MEC's own actions and documents prove that MEC treated the BIA as a retail customer. See, BIA opening brief and citations to the administrative record in this proceeding. The BIA was MEC's retail customer at Long Mesa.

III. THE ACC SHOULD FIND BOTH THAT (1) THERE HAS NOT BEEN AN EXTENSION OF MEC'S CCN AT THIS TIME AND (2) MEC CANNOT ABANDON THE LINE WITHOUT FIRST OBTAINING AN ORDER PURSUANT TO A.R.S. § 40-285

The ACC staff recommends findings that (1) at least at this time the Line has not extended MEC's CCN and (2) MEC cannot abandon the Line without complying with A.R.S. § 40-285(A). These two findings are not mutually exclusive. The staff's recommendations are appropriate, both under the facts of this case and the laws and regulations governing utilities.

Respectfully submitted this 6 day of August, 2012.

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¹ The BIA requests that MEC be required to notify the ACC if MEC is unable to obtain an easement for the Line.

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2 this 12 day of August, 2012, with:

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